APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

08-4954-ag NAC

[Filed July 15, 2009]

SENKE ZADRIMA, ALSO KNOWN AS ANGELINA LULGJURAJ,
Petitioner,

v.

ERIC H. HOLDER JR., ATTORNEY GENERAL,*
Respondent.

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE

* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Eric H. Holder Jr. is automatically substituted for former Attorney General Michael B. Mukasey as respondent in this case.

OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV/). IF NO COPY IS SERVED BY REASON OF AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 15th day of July, two thousand nine.

PRESENT :

HON. DENNIS JACOBS,
Chief Judge,
HON. REENA RAGGI,
HON. PETER W. HALL,
Circuit Judges.

FOR PETITIONER: Charles Christophe, Christophe & Associates, New York, New York.

FOR RESPONDENT: Gregory G. Katsas, Assistant Attorney General; Richard M. Evans, Assistant Director; Andrew Oliveira, Trial Attorney, United States Department of Justice, Office of Immigration Litigation, Washington, District of Columbia.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals ("BIA"), it is hereby ORDERED, ADJUDGED, AND DECREED, that the petition for review is DENIED.

Petitioner Senke Zadrima, a native and citizen of Albania, seeks review of the September 19, 2008 order of the BIA affirming the June 22, 2007 decision of Immigration Judge ("IJ") Alan Vomacka, denying her application for relief under the Convention Against Torture ("CAT"). *In re Senke Zadrima,* No. A96 434 967 (B.I.A. Sept. 19, 2008), *aff'g* No. A96 434 967 (Immig. Ct. N.Y. City June 22, 2007). We assume the parties' familiarity with the underlying facts and procedural history of the case.

"Where the BIA adopts the decision of the IJ and merely supplements the IJ's decision, [ ] we review the decision of the IJ as supplemented by the BIA." *Yan Chen v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). We review the agency's factual findings under the

substantial evidence standard. 8 U.S.C. § 1252 (b) (4) (B); *see also Manzur v. U.S. Dep't of Homeland Sec.*, 494 F.3d 281, 289 (2d Cir. 2007). We review *de novo* questions of law and the application of law to undisputed fact. *See Salimatou Bah v. Mukasey*, 529 F.3d 99, 110 (2d Cir. 2008).

Substantial evidence supports the agency's finding that Petitioner failed to meet her burden of proof for CAT relief. contrary to Petitioner's argument, the agency properly complied with this Court's prior order, which required it to independently analyze Petitioner's CAT claim. *See Zadrima v. Gonzales*, 187 Fed. Appx. 58, 58 (2d Cir. 2006). Moreover, the agency was entitled to reply, in part, on the IJ's underlying adverse credibility determination, which we have previously affirmed. *See id.; see also United States v. Quintieri*, 306 F.3d 1217, 1225 (2d Cir. 2002) (emphasizing that "when a court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case") (citation omitted). Thus, to the extent Petitioner's CAT claim was based upon events that occurred in her past, the prior adverse credibility determination undermined her claim. *See Xue Hong Yang v. U.S. Dep't of Justice*, 426 F.3d 520, 523 (2d Cir. 2005) (when the only evidence that petitioner was likely to be tortured depended upon the petitioner's credibility, an adverse credibility determination undercuts the claim for CAT relief).

In keeping with our prior order, both the IJ and the BIA also explicitly considered the Country profile and other documents attesting to the abduction of young women in Albania. *See Zadrima*, 187 Fed. Appx. at 58 (requiring the agency to examine the Country Profile

and other record documents and analyze Petitioner's likelihood of torture upon return). Yet, as the agency properly noted, the record does not indicate that trafficking crimes in Albania are being perpetuated by or with the acquiescence of the government. *See* 8 C.F.R. § 1208.18 (a) (1) (defining torture, in pertinent part, "as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for [certain] purposes . . . when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity"). The 2006 Country Report on Human Rights Practices for Albania discusses multiple efforts by the Albanian government to combat trafficking, including a child trafficking strategy and action plan based on United Nations Children's Fund guidelines, a full time anti-trafficking deputy minister, regional committees designed to combat trafficking, and an "ambitious anti-trafficking awareness program" in schools. Notwithstanding that the Country Report notes that "police officers continued to be involved in various forms of trafficking-related corruption," the record contains no evidence of government acquiescence in such trafficking but rather evidence that the government is attempting actively to address the trafficking problem. *See Delgado v. Mukasey*, 508 F.3d 702, 708 (2d Cir. 2007) (" 'Acquiescence' does not require official 'consent or approval'; it 'requires only that government officials know of or remain willfully blind to an act and thereafter breach their legal responsibility to prevent it.' ") (quoting *Khouzam v. Ashcroft*, 361 F.3d 161, 170-71 (2d Cir. 2004)).

Moreover, Petitioner relies on generalized evidence concerning the trafficking of Albanian women and has

submitted no particularized evidence indicating that she would more likely than not be abducted and sold into slavery. *See Mu Xiang Lin v. U.S. Dep't of Justice*, 432 F.3d 156, 160-61 (2d Cir. 2005) (finding that a reasonable factfinder would not be compelled to conclude that petitioner would more likely than not be subject to torture if returned to China because petitioner offered "no particularized evidence to support her claim"); *Mu-Xing Wang v. Ashcroft*, 320 F.3d 130, 144 n.21 (2d Cir. 2003). Accordingly, the agency properly denied Petitioner's request for CAT relief.

For the foregoing reasons, the petition for review is DENIED. As we have completed our review, any stay of removal that the Court previously granted in this petition is VACATED, and any pending motion for a stay of removal in this petition is DISMISSED as moot. Any pending request for oral argument in this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34 (a) (2), and Second Circuit Local Rule 34 (b).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: /s/ Frank Perez

APPENDIX B

[SEAL]

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Desvarieux, Melissa, Esq.
2 Wall Street, 8th Floor
New York, NY 10005

U.S. DHS, Litigation Unit/NYD
201 Varick, Rm. 1130
New York, NY 10014

Name: ZADRIMA, SENKE **A096-434-967**

Date of this notice: 9/19/2008

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

/s/ Donna Carr
Donna Carr
Chief Clerk

Enclosure

Panel Members:
FILPPU, LAURI S.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A096 434 967 - New York, NY

Date: SEP 19 2008

In re: SENKE ZADRIMA a.k.a. Angelina Lulgjuraj

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Melissa M. Desvarieux, Esquire

CHARGE:

Notice: Sec. 212(a)(4)(A), I&N Act [8 U.S.C. § 1182(a)(4)(A)] - Public charge

212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigrant visa or entry document

APPLICATION: Convention Against Torture

On June 23, 2006, the United States Court of Appeals for the Second Circuit upheld the Immigration Judge's denial of the respondent's applications for asylum and withholding of removal, finding that the

adverse credibility finding was supported by substantial evidence. The Second Circuit noted that since relief under the Convention Against Torture does not require a credible subjective belief that torture will occur, the Immigration Judge must consider the respondent's CAT claim despite an adverse credibility finding as to asylum and withholding claims. Accordingly, the Second Circuit remanded the case to the Board to determine whether the respondent established that it is more likely than not that she will be tortured if removed to Albania. The court noted that the Immigration Judge did not address the likelihood of the respondent's torture upon return to Albania, whether abduction, forcing a girl into a trafficking ring, and selling her into sexual slavery may constitute torture, and whether it is more likely than not that the respondent would be subject to this harm.

On January 30, 2007, the Board remanded the record to the Immigration Judge for a further hearing consistent with the Second Circuit's decision. In a decision dated June 22, 2007, the Immigration Judge determined that abduction, forcing a girl into a trafficking ring, and selling her into sexual slavery, would constitute torture (I.J. at 5). However, the Immigration Judge concluded that the respondent failed to meet her burden of proof that it is more likely than not that she would be tortured if returned to Albania (I.J. at 23). The respondent appealed.[1] The

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[1] On appeal, the respondent contends that the Immigration Judge erred in finding her incredible. The respondent also contends that the Immigration Judge erred in denying her applications for asylum, withholding of removal, and protection under the Convention Against Torture. We note that the decisions regarding the respondent's credibility, and the denial of asylum and

appeal will be dismissed. An applicant for protection pursuant to the Convention Against Torture (CAT) bears the burden of demonstrating that it is "more likely than not" that he will be tortured in the proposed country of removal by or with the consent or acquiescence of a public official acting under color of law. *See* 8 C.F.R. §§ 1208.16(c)(2), (4) and 1208.18(a).

We find no error in the Immigration Judge's determination that the respondent has failed to adequately demonstrate that it is "more likely than not" that she would be subject to torture by or with the consent or acquiescence of a public official in Albania.[2]

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withholding of removal are final. The Second Circuit remanded for the purpose of addressing the respondent's CAT claim, no new testimony was taken on remand, and the new evidence introduced on remand pertained principally to current country conditions. Hence we see no reason to revisit the earlier credibility ruling.

[2] The regulations define "acquiescence of a public official" as requiring that such an individual, "prior to the activity constituting torture, have *awareness* of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity." 8 C.F.R. § 1208.18(a)(7) (emphasis added). Concomitantly, the United States Court of Appeals for the Second Circuit, in whose jurisdiction the present matter arises, has determined that the term "awareness" includes both actual knowledge *and willful blindness. See Khouzam v. Ashcroft*, 361 F.3d 161 (2d Cir. 2004). *Cf: Matter of S-V-*, 22 I&N Dec. 1306,1312 (BIA 2000); *Matter of Y-L-*, A-G-, R-S-R-, 23 I&N Dec. 270, 283 (A.G. 2002). This is not to say that it is sufficient for the respondent to show only that Albanian officials are aware of the activity constituting torture but are powerless to stop it. However, if an alien is able to establish that public officials would remain blind to an alien's risk of torture by non-state actors, she would be entitled to protection under the Convention Against Torture. Nonetheless, the respondent has not shown that the Albanian

See 8 C.F.R. § 1208.16(c).

At the remanded hearing, the Immigration Judge found the State Department Country Reports for 2006 (Report), released on March 6, 2007, to be probative. While the Report stated that trafficking of women and children continued to be a problem, the Report also indicates that the prosecution of traffickers has improved (Report at 7, 8). The Report also notes that unlike prior years, there were no reports of cases of direct police involvement in trafficking. Moreover, police treatment of trafficked women continued to improve. The Immigration Judge found substantial evidence that the Albania Government is trying a variety of means to combat the dangers of sex trafficking, although he found the problem had not yet been dealt with adequately.

The Immigration Judge concluded that the respondent had not presented sufficient evidence to sustain her burden of proof that she has a clear probability of torture, if she returns to Albania. 8 C.F.R. § 1208.17. While she faced some risk of abduction and torture, the risk was meaningfully below the level necessary for CAT protection.

We find that the Immigration Judge correctly concluded that the respondent has not demonstrated that she will be subject to torture by a public official, or at the instigation or with the acquiescence of such an individual, and that there is insufficient evidence in the record from which to conclude that the respondent

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government would remain even willfully blind to any abuse that she may suffer.

possesses a clear probability of future torture. The Immigration Judge's adverse credibility finding as to the respondent's own claims, and the country condition evidence as to the risk in general, support the Immigration Judge's finding. As such, we will also affirm the Immigration Judge's denial of the respondent's request for protection under the Convention Against Torture.

In view of the foregoing, the following order will be entered.

ORDER: The appeal is dismissed.

/s/
FOR THE BOARD

APPENDIX C

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW IMMIGRATION COURT
New York, New York

File A 96 434 967

[Filed June 22, 2007]

In the Matter of	)
	)
SENKE ZADRIMA,	)
	)
Respondent	)
	)

IN REMOVAL PROCEEDINGS

CHARGE:	Section 212 (a) (4) (A) of the Immigration Act; an alien likely to become a public charge. Section 212 (a) (7) (A) (i) (I) of the Immigration Act; an alien who is an immigrant without proper documents to be admitted to the United States as an immigrant.
APPLICATION:	Protection under the Convention Against Torture.

ORAL DECISION OF THE IMMIGRATION JUDGE

This case was previously before the Court and is now before the Court for issuance of a second decision addressing, specifically, the respondent's claims under the Convention Against Torture.

In previous proceedings, which are all part of the same record, the respondent applied for asylum, withholding of removal and protection under the Convention Against Torture. The Court issued an oral decision on May 7th, 2004, denying each of those three claims.

On October 11th, 2005, the Board affirmed that decision without opinion.

On June 23rd, 2006, the 2nd circuit upheld the Court's denials of asylum and withholding of removal under Section 241 of the Immigration Act by dismissing the respondent's petition in relation to those to claims. But the 2nd circuit amended the case for a further decision or further proceedings, in relation to the claim under the Convention Against Torture.

On January 30th, 2007, the Board of Immigration Appeals issued a short decision remanding the case to this Court for the sake of a new decision under the Convention Against Torture.

When the case was remanded, the respondent attended a hearing before the Court. Respondent's counsel indicated at that time, that the respondent sought only to supplement the evidence, bringing it up to date in terms of the application for relief that was

before the Court. The Court understood this to mean only secondary evidence of a general nature about conditions in the country and the Court agreed that that was a good idea. Respondent has submitted one document which is not general secondary evidence about country conditions in Albania, but rather is a specific document prepared for the sake of this litigation by a police official in Albania sent here to be offered as evidence. I believe that's clear from the face of the document. The Court actually has concerns about this document which I'll address in a moment, and I suppose it would be more accurate to say that the document purports to be a document prepared by a police officer in Albania. The document is in group Exhibit R1, under tab A, and a corrected translation, which is the translation on which the Court will rely, is tab A in group Exhibit R-2.

The respondent is not seeking any additional form of relief at this time and the Court does note its prior finding that the respondent made a material misrepresentation at the time of her arrival in the United States, which I believe would make her inadmissable to the United States. And, by far, certain other types of relief.

The relief under the Convention Against Torture is relief which the respondent must establish by a preponderance of the credible evidence, it is not a discretionary form of relief, but there are certain requirements the respondent must meet. As the Attorney General held in his decision in 2006, in matter of JFF, the applicant for such relief has to establish each point required by regulations from the text of the Convention Against Torture, and must

establish each point by a preponderance of the credible evidence.

As these points may be applied in relation to the present case, the Court would describe them as follows:

First, each element the respondent must prove, must be shown to reach the level of probability, which the regulations at 8CFR 208.18, define as greater than a 50% chance that such a thing will occur. Second, the respondent must establish that she will be subjected to torture, or at least that there is a probability she will subjected to torture, and the meaning of the term torture is specifically defined, for purposes of the Court, by the regulations of the Attorney General, specifically at 8CFR 208.18 (a).

The respondent must also establish that the torture would occur while she is "held in custody." And, finally, must establish that the torture will either be inflicted by the Government or with the acquiescence of the Government.

In particular, the meaning of the term probability is defined by regulation, to be more likely than not or in other words, greater than a 50% chance. This is a very different standard approved than under the claim for asylum under Section 208 of the Immigration Act, where the Higher Court's recognize that a "well-founded fear of persecution" might be as little as 10 or 20% chance of persecution. I suppose, in some cases, it might even be less than a 10% chance of persecution, enough to make a reasonable person fear returning to their country.

In the Convention Against Torture, if the chance of torture is not greater than 50% chance, then the Court should deny the application for relief. Theoretically, if it were possible to establish such probabilities or chances by mathematical precision, a person who showed a 49% chance of being seriously tortured for a lengthy period with no hope of escape, but the chance was 49%, then the Court should deny the relief.

As far as the meaning of torture, there, undoubtedly, are many types of conduct that can meet the definition. The 2nd circuit appeared to be unsure whether this Court would believe that the respondent's expressed fear of being kidnaped, possibly raped, and forced into prostitution. Perhaps, in some foreign countries, whether that would constitute "torture." As far as the Court is concerned, it seems plain that it would, especially given background information about how such actions against the respondent might be carried out. And, furthermore, the Court would note that if we address the situation, which seems to be the primary possibility as expressed by the respondent, that she would be kidnaped out of Albania and then taken to another country, such as Italy to be forced into prostitution. The Court would still say that kidnaping the respondent and taking her by force out of Albania for the purpose of forcing her to engage in prostitution in another country, would still, in the Court's view, constitute "torture," which could be assessed as to whether it occurs by the Government of Albania or with the acquiescence of the Government of Albania, leaving aside any actions that might be taken by the Government of Italy or some other country where the respondent might be taken by force. So, the Court doesn't actually think that the torturous conduct has to necessarily occur in Albania if the Government

allows this to occur to the respondent, in some other country, by failing to prevent her being taken out of Albania by force.

As far as the requirement that the torture occur, either by the Government or with the acquiescence of the Government, again the Court believes that this requirement is slightly different from the standard analysis in relation to a claim for withholding of removal under Section 241 of the Immigration Act, which is a similar but not identical form of relief. Under the withholding statutes, Section 241, the case law indicates that the persecution, which the applicant fears, must be due either to the Government or some group which the Government is unable or unwilling to control. Technically, I believe for the Convention Against Torture, the respondent must show either that the Government will take part in the torture or that the Government would be aware, in advance, of the torture and fail to take lawful steps to prevent it.

The distinction, I believe, is a question of a Government which is, in some way, unable to prevent some type of harmful conduct to a citizen. In the Court's view, in the withholding under Section 241, if a Government is unable to protect its citizens from persecution, that may be sufficient to satisfy that part of the requirement for such relief. But I believe in reference to the Convention Against Torture, there must be, first, advanced knowledge and second, a failure to act, a failure to use lawful means to prevent the torture. And, this I believe, is different in most practical context that a Court might consider for determining whether the Convention Against Torture relief is justified.

In reference to the term acquiescence, I believe that the 2nd circuit Court of Appeals indicated its disagreement with certain aspects of the interpretation by the Board of Immigration Appeals, in particular in Khouzim v. INS 361 F 3rd 161 (2nd circuit 2004). The 2nd circuit held that it would be enough if the Government is "willfully blind" to the occurrence or possible occurrence of torture. In other words, Government officials do not need to have actual knowledge that torture is about to occur if there aware of underlying facts and circumstances that would lead a reasonable person to have such knowledge. And, that case in particular concerns a pattern of brutality by prison or jail officials in Egypt, but might as well, possibly, apply to the situation in the present case.

As far as the evidence which is before the Court at this time, all the evidence previously submitted in the original hearing, is still part of the evidence including the respondent's testimony, documentary evidence, evidence submitted about country conditions. We have, somewhat, more recent evidence concerning the conditions in Albania, which I will turn to in a moment.

However, the Court would note what I believe should not be overlooked. Although, the Convention Against Torture, as the 2nd circuit noted, does not necessarily depend upon a subjected fear by the applicant for relief. And although, an applicant who is in other ways lacking in credibility, might still show a pattern or set of circumstances in her home country that would establish a probability of torture. The fact that the respondent in this case is not credible as a witness in the prior proceeding, does have a baring on the possibility that she may be subjected to torture.

First, not only has the respondent found to be not credible in the Court's previous decision, and both the Board and the 2nd circuit sustained that finding, but the respondent testified that her parents had advised her to give false information at the time she arrived in the United States if she was stopped by the Immigration Officers. Furthermore, the parents' letter, which was submitted in the earlier round of proceedings, which is Exhibit 7 for identification only, which is tab J in group Exhibit 7 for identification from the earlier set of proceedings, that letter itself was sent in, submitted as evidence, in an untimely fashion under the deadlines the Court had established and the Court has never actually been provided with an original of the letter. That letter from the parents, therefore, is not actually part of the evidence before the Court in terms of what has been admitted.

But the Court would also note that it has questions concerning the document that was submitted as tab A in both group Exhibit R-1 and R-2, relying on the translation in Exhibit R-2. That document purports to have been issued in March 2003 and it purports to be a certificate from a police officer that the respondent's father came to the police station that day to denounce "some masked persons" for attempting to take the respondent out of Albania.

However, the original record includes another document from the police department from December 2000. And, the respondent testified that she had been the subject of a kidnaping attempt when she was 12 years old. That event is described in the police report from December 2000. The respondent also referred to her father being threatened in June of 2003, that the respondent was still at risk of being kidnaped and

taken out of Albania to serve as a prostitute. But the respondent, in her testimony, made no reference to an event occurring between December 2000 and June 2003. Therefore, it's difficult to understand why the respondent's father would have gone to the local police station on March 15th, 2003 to denounce some attempt to kidnap the respondent since he had done so in December 2000 without any practical affect or result. And, the incident in which he, himself, was threatened in June 2003 was still three months in the future.

For this reason the Court would suggest that there are number of reason to be dubious about the authenticity of the supposed letter from the police commissioner on March 15th, 2003. I doubt that the respondent's father went to the police in that month to make such a report because, at best, it would suggest that something had happened to the respondent which she completely failed to mention in her testimony, and that appears unlikely. Also the Court doubts the letter is actually from a police official in Albania or if it is, whether the police official intended it to be a truthful document or simply provided it as a favor in return for some payment.

Now, the Court would say that I don't think it's actually necessary to determine these issues and I've explained on the record before issuing the decision, the reasons why I'm simply making a note of the concerns the Court has and indicating what weight I would give the evidence which is presently before me.

I would further note that there would be a question as to if such a certificate from the police official existed as of March 15th, 2003, why it wasn't submitted as evidence in the case, during the hearings, which went

on until 2004. And, further, as I've described to the attorneys today, my concerns about the appearance of the seals, over the signature, on the letter from March 15th, 2003, suggest to me that it is either been tampered with or perhaps simply a skillful, handwritten reproduction of the general appearance of a seal from the police office.

The point of mentioning the Court's concerns about the past misrepresentations by the respondent and the present disturbing indications that someone is misrepresenting facts or documents for the respondent's benefit to this time, is to point out that the portion of our record which relies on the respondent's testimony on documentary statements from people in Albania who appear to be related to her or on their behalf, is a part of the record that actually deserves very little weight. The respondent could misrepresent a thousand significant issues and still be eligible for relief under the Convention Against Torture. In fact, a person who has a genuine conviction that she's likely to be tortured, may be tempted to misrepresent almost anything to avoid that penalty. However, the Court in assessing the risk that the respondent may be tortured in Albania, can put essentially no weight on her claimed past experiences and can give very little weight on the reliance of the picture presented, so to speak, of the respondent's family background, including her parent's activities. For example, part of the respondent's original claim was that because her father was a supporter of the Democratic Party and the Democratic Party had been tossed out of power by reborn Communist Party under another name, the Socialist Party, that therefore Government Officials would be less likely to take any helpful steps to protect the respondent from such harm

as being kidnaped. But, why should the Court assume that the respondent's father ever had any sympathy for or involvement with the Democratic Party when there are a number of indications that the father, most likely, has provided documents which are not authentic or made statements that are not truthful aside from what the respondent admits he did, which was to tell her to lie if she was caught by the Immigration Officials. Furthermore, why should the Court suppose that the respondent's father is not involved in criminal activity in Albania. The only reason we assume that is true is, by default, because we think most people are not or because the respondent has told us that her father is a Democratic Party supporter and criminals want to harm him for that reason. But in fact, we don't know anything about the respondent's father for sure, except that there is troubling problems with documents that it appears he has sent from Albania to the United States. The act of telling a daughter, who's on her way to the United States, that if she's stopped at the airport that she should lie to Immigration, is actually more consistent with a person with a criminal frame of mind then it is with a person who's a law abiding person.

Therefore, the Court would say that there is little reason to put any substantial weight on any factual statements from the respondent, including the claim she was previously the subject of an attempt to be kidnaped or sold into prostitution.

Given essentially nothing on the respondent on which the Court can put any significant weight or be sure about, what is shown by the rest of the evidence in the case.

The secondary evidence does show a possibility that a young woman in Albania might be kidnaped, sexually assaulted, forced into prostitution, sent to another country where she would be forced to labor as a prostitute well confined to some place, that is a possibility. It may be a possibility in any country, but it certainly is a definite possibility in Albania. The secondary evidence deals with the problem of trafficking through inducement, such as making false promises, as well as physical abduction, and forced removal from the country.

As far as the respondent's present situation, all the Court really knows about her, at the present time that I can really rely upon, is that she's 19 years old, that she's like to be 20 before there is a final decision issued in this case not 21, and that she's from Albania. Otherwise, the Court doesn't actually know what background the respondent came from. I only know what she says is her background and I don't believe she's credible on that point.

As far as the original definition of a particular social group, which was the underpinnings for the respondent's claim under Section 208 and Section 241 of the Immigration Act, that is legally irrelevant to a claim under the Convention Against Torture. The respondent doesn't have to show that she's a member of a "particular social group" to qualify for relief under the Convention Against Torture. However, I do note that when the respondent was seeking protection through her asylum application, her attorney, near th conclusion of the hearing, in a closing statement on page 87 of the transcript, described the particular social group in which she belonged as being "young girls" and then indicated "between 12-18 years old"

who were at risk of being kidnaped and forced to work as a prostitute from Albania. The respondent, at this point, is a year older than the particular social group that her attorney was relying upon at that time.

However, I will also note that although the respondent's own definition of her position or the danger she might be in, is somewhat dated given the years that have gone by. This Court didn't actually accept the idea that there was an upper age limit on a particular social group in this case. I made these remarks in the oral decision from May 7th, 2004 at page 5, basically rejecting the concept that there was a particular social group, that is to say one that was defined in a reasonably narrow way. And, I indicated that, in fact, a woman older than 18 might as well be the subject of forced prostitution under circumstances like that described by the respondent and I still believe that's true.

However, there is still some element of the respondent's claim under the Convention Against Torture, which might be considered to involve some type of "aging out" since it is, certainly likely, that people seeking to kidnap women to force into prostitution, would be more likely to seek a teenage or young adult woman as opposed to a woman who's 45 years old, given what seems to be a worldwide emphasis on youth as part of the attraction for females.

So I believe that there is a basic reality we can understand that the older the respondent gets, the less likely she might be to be the subject of dangers.

But this, it seems to me, is a relatively minor part of the problems in the respondent's case.

The other part of the case, which I believe has been affected by the passage of time, is that the respondent's original claim involved an element that her being kidnaped and forced to work as a prostitute, would be, in part, at least retaliation for her father's political support with the Democratic Party in Albania and, to some extent, Government Officials would not take action to prevent such kidnaping because the Government was controlled by the Socialist Party. The Socialist Party and th Democratic Party are direct opposites and therefore, the respondent would not get, even ordinary, police protection from the police in Albania.

Given the lack of the credibility of the respondent and given, perhaps, even lower credibility for her father based on what we know from this side of the Atlantic, it seems to the Court that there's no particular reason to think that the respondent's father was a supporter of one Party or another, was ever known to be a supporter of the Democratic Party, etcetera. There is a document that appears to indicate he was a member of the Democratic Party, but there's no particular reason to give that document more credence than the documents which seem to be of suspicious nature.

But, if we assume that the respondent's father had some connection or identification with the Democratic Party, then we also know that at the present time the Democratic Party has the majority control in Parliament, through a collation with some smaller Parties, and that the Socialist Party was the loser in

the most recent Parliamentary elections. It is also true, the Socialist Party did better and better than the Democratic Party in the most recent local elections in terms of municipal offices. But the fact of the matter is, that the Democratic Party controls the National Government, has the power to name the interior ministry, the national police officials etcetera. Further, the Court believes the secondary evidence has some basis to show, what I have also heard many times, that the city of Schoder (phonetic sp.), the area from which the respondent comes, tends to be strong in support of the Democratic Party as opposed to the Socialist Party and that therefore, there's even less reason to think that official's there would turn a blind eye to respondent's problem if her father has some connection with the Democratic Party.

We also have new supporting evidence which also adds some to the picture we had from the previous documentary evidence. The Court would note the following: First, as far as group Exhibit R-1 tab E, this document is from 2002. It's from before the respondent left Albania, so it's hardly new evidence. It mentions expanded activity by Albanian gangs in a somewhat sensationalistic way. It actually mentions that some of the gangs are even active in the U.S., including the mid-western parts of the U.S. So, if one were to follow the logic of the secondary evidence, this might suggest that even if the respondent was allowed to stay in the United States, she might be at some danger from Albanian gangsters.

As far as tab D in the same group Exhibit, this document is a report about conditions in May 1999, eight years ago, and relates to women from Kosova (phonetic sp.) who crossed the border into Albania and

were in refugee camps in Albania. The fact that those women may have been victimized, in my view, is not much support for the idea that the respondent has a probability of torture at the present time, not being a refugee from Kosova and given the passage of time.

As far as the most important supporting evidence in group Exhibit R-1, I believe it's tab K, which is the March 2007 publication of the annual report on human rights conditions in Albania by the State Department, covering the calendar year 2006.

In that document, I believe it's fair to say, the State Department acknowledges and discusses the difficulties for women on Albania posed by kidnaping, sexual abuse, and trafficking for sexual purposes in particular. At page 7 and 8 of 10, the State Department discusses this in some detail.

The report does not give a glowing picture. The report does not indorse, wholeheartedly, the efforts or the results of Government attempts to deal with the trafficking in Albania, but it does make, at least, the following comments:

On page 8, it states "prosecution of traffickers has improved." It refers in the same portions of the text, to increase penalties for sex trafficking or trafficking persons in Albania. It also refers to actions by the Government to implement witness protection laws, obviously of some relevance in this field. And furthermore, it states, on page 8, in the sixth paragraph, "in contrast to previous years, there were no reports of police involvement in trafficking." However, it goes on to say that police officers do continue to be involved in various forms of corruption

related to trafficking. And then it says, this is so "despite determined efforts by the Office of Internal Control and State Intelligent Service to address the problem."

What the Court gathers from the annual report and from the secondary evidence as a whole, is it's undeniable. There has been a problem in Albania concerning sex trafficking. It's clear that the problem has not been dealt with adequately, but does appear that there has been some attempt to improve the situation and further, that the Government is trying a variety of means t combat the dangers of sex trafficking in Albania.

In saying so, the Court is not saying that the current Albanian Government does not include corrupt police officers because I believe, any expert in the field would agree, that there must be some corrupt police officers in Albania given the past history the country has had. Furthermore, the Court can certainly agree that there are some Government Officials, higher than police officers, who are involved in corruption and who may, directly, share in some sex trafficking proceeds.

On the other hand, the Court thinks the substantial evidence of specific attempts by the Government, to deal with the problem, is a major barrier to the respondent's application for relief.

In relation to the respondent in particular, her presentation of her case, assuming the documents she's presented are more or less authentic, is that the local police in her area have, at least twice, supplied documents which indirectly tend to support her claim for relief. That is to say that there were such incidents

where timely reports of kidnaping were made, etcetera. There is nothing in those documents to indicate any type of hostility toward the respondent or her family. There is nothing to indicate disinterest in her problems. The original translation of tab A in group Exhibit R-1, did tend to suggest that the police were, simply, not interested. The Court sent out an order asking for a clarification of the translation and, in fact, the clarified translation indicates a lack of ability as opposed to a lack of attempt or willingness to take steps to try to protect the respondent or investigate crimes against her.

The Court believes that it's true, as a general proposition, that inability by a Government to prevent all occurrences of conduct that may constitute torture, is not the same thing as acquiescence by the Government, much less, the Government actually taking such action itself.

In the Court's prior oral decision from 2004, page 11, the Court discussed the difference that I see between the inability fo a Government and the concept of acquiescence as it's interpreted by the regulations and in this area of the 2nd circuit Court of Appeals.

The particular regulation to which I refer is 8CFR 208.8 (a) (7) and reads as follows: "Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity."

I believe there are two potential ways in which this definition may be read. If in fact, the official must be aware of the activity, "prior to the activity," the official

would have to a kind of foresight, the ability to look into the future, because the term activity, meaning torturous activity, is not something you can be aware of until it begins to occur, so how could you be aware of it ahead of time. One way to interpret this would be to say that if the Government is aware that such things have happened in the past, and are likely to happen in the future, therefore, the Government must breech it's responsibility to intervene to prevent the activity. And, I believe under that reading, it might be understood, that the inability of the Government, despite its best efforts, was enough to allow the application of the Convention Against Torture.

This Court frankly thinks that the meaning of the regulation, not as precisely worded as it could be, is that the official be aware before the torture begins, that the torture is going to or likely to begin and then fail to take such legal actions to stop it. And, I believe that's a more sensible, more practical interpretation of that regulation and that is the light in which I interpret the regulation for this case.

The Court believes, one may say, that the Government of Albania is probably aware, most likely aware, of the risk of sex trafficking, kidnaping, forcing out women to be prostitutes, may occur in Albania, but I don't believe this means that the Government of Albania must divert all its national resources to prevent such a problem. Albania is still a relatively primitive country in terms of info structure. I believe this is reflected in the secondary evidence that we have, including the annual report. If the Government were to completely prevent kidnaping of young women, once it was aware that this might occur, it might have to triple the size of the police force and focus almost all

of the attention of the police on this one particular problem without preventing bank robberies, or muggings in the main streets, or various other types of criminal activity. And, I don't believe this is what is required by the sense of the Convention Against Torture.

The fact is that in any country, that I'm aware of, at almost any time. it is always a possibility crime will occur even if one is well aware of the possibility that the crime may occur. And, therefore, as far as the Court is concerned, the sensible interpretation of the implementing regulations of the Convention Against Torture, does not mean that if a Government cannot prevent certain tortuous activities from time to time, therefore, the applicant should be granted the relief. I believe that acquiescence of the Government means that a Government Official is aware or willfully blind to the fact that a citizen of the country is in imminent, or nearly imminent danger of torture under a particular set of circumstances and fails to take reasonable attempts, lawful attempts to stop that. I don't believe it means that the resource of the country have to be entirely devoted to stopping that problem.

The Court would say that given this framework and this point of view for analysis of the claim, one way to approach the question is to ask whether more than 50% of Albanian women under a certain age, whether it be 30 or 25 or 20 or 18 as respondent's counsel once suggested, whether more than 50% of that group of women are actually going to be kidnaped and forced to engage in prostitution. To ask the question in this way, makes it seem a bit unreasonable. But in fact, that I believe is what the regulations implementing the Convention Against Torture require. There has to be

a greater than 50% chance this will occur to the applicant, not a greater than 50% chance that a, person like the respondent would be afraid that it might happen to her. That is a different standard of proof, but, in fact, it's pretty close to the standard of proof for asylum under Section 208 of the Immigration Act.

Therefore, considering the Court's significant problems with the credibility of the respondent and the supporting documents, considering the evidence as a whole, even including what weight I can put on the respondent's testimony, and the documents about her individual case, I don't' think the respondent is, actually, close to establishing the all important probability, the greater than 50% chance, that she would be forced to take part in prostitution through kidnaping, assault, etcetera.

Reasonably pessimistic person might agree that there's a 10% chance that that might occur. I'm not sure that it's true in the respondent's case. But, even if that's so, it's nearly enough for the respondent to prevail in this form of relief.

Further and perhaps most important, the Court doesn't believe the evidence supports the idea that the Government of Albania would probably acquiesce in such conduct or such events, even if it was aware of the risk to the respondent.

For these reasons, the claim under the Convention Against Torture is hereby denied.

IT'S FURTHER ORDERED, that the respondent be removed from the United States to Albania on the charge which was sustained.

ALAN VOMACKA
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before ALAN VOMACKA in the matter of:

SENKE ZADRIMA
A 96 434 967
New York, New York

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

/s/Victoria Smothers
Victoria Smothers (Transcriber)

Deposition Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301) 881-3344

September 23, 2007
(Completion Date)

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 10th day of September, two thousand and nine,

Before: Dennis Jacobs,
Chief Judge,
Reena Raggi,
Peter W. Hall,
Circuit Judges.

Docket Number: 08-4954-ag

[Filed September 10, 2009]

Senke Zadrima, also known as Angelina Lulgjuraj,	)
Petitioner,	)
V.	)
Eric H. Holder, Jr., Attorney General,	)
Respondent.	)

ORDER

Senke Zadrima, also known as Angelina Lulgjuraj, having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For the Court:
Catherine O'Hagan Wolfe, Clerk

By: /s/Frank Perez
Frank Perez, Deputy Clerk

*Pursuant to Federal Rule of Appellant Procedure 42(c)(2), Attorney General Eric H. Holder Jr., is automatically substituted for former Attorney General Michael B. Mukasey as respondent in this case